

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIO LAVANDEIRA, d/b/a PEREZ HILTON,

*Plaintiff,*

*- against -*

INFUSE LLC, d/b/a WWW.PEREZREVENGE.COM,  
INFUSE FX, and INFUSE FX ENTERTAINMENT  
GROUP; MARGIE E. ROGERS; ELIZABETH  
SILVER-FAGAN a/k/a ELIZABETH SILVER; and  
DOES 1 through 10, inclusive,

*Defendants.*

Case No.: 08 CV 11213  
(JSR) (DF)  
**ECF CASE**

**NOTICE OF MOTION**  
**TO DISMISS AND TO STRIKE**

**PLEASE TAKE NOTICE** that, upon the accompanying Declaration of Jeffrey M. Eilender, dated February 9, 2009, and the exhibits annexed thereto, and the accompanying Memorandum of Law, dated February 9, 2009, Plaintiff, through his undersigned counsel will move this Court at the Courtroom of the Honorable Debra Freeman, United States Magistrate Judge, at a date and time to be set by the Court, at the United States Courthouse, located at 500 Pearl Street, New York, New York 10007, for an Order: a) to dismiss the Counterclaims of Elizabeth Silver (“Silver”) as duplicative of her state law claims in *Silver v. Lavandeira et al.*, 08-CV-6522 (JSR)(DCF) and pursuant to F.R.C.P. 12(b)(6), for failure to state a claim; (b) to strike the Answer, Affirmative Defenses, and Counterclaims purportedly filed by Defendant Silver on behalf of Defendant Infuse LLC d/b/a www.perezrevenge.com (“Infuse”); and (c) alternatively, to dismiss the counterclaims of Infuse on the same grounds as relate to Silver’s Counterclaims.

**PLEASE TAKE FURTHER NOTICE** that opposition papers, if any, shall be served by you upon on Jeffrey M. Eilender, Esq. of Schlam Stone & Dolan, 26 Broadway, New York, New

York 10004, on March 2, 2009. Plaintiff's reply papers are due on March 16, 2009.

**NOTICE:**

**TO A PRO SE LITIGANT WHO OPPOSES A RULE 12 MOTION  
SUPPORTED BY MATTERS OUTSIDE THE PLEADINGS**

The Defendant in this case has moved to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and has submitted additional written materials. This means that the defendant has asked the court to decide this case without a trial, based on these written materials, including affidavits, submitted in support of the motion. You are warned that the Court may treat this motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For this reason, **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION** by filing sworn affidavits or other papers as required by Rule 56(e). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial.

The full text of Rule 56 of the Federal Rules of Civil Procedure is attached hereto.

In short, Rule 56 provides that you may NOT oppose the defendant's motion simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising issues of fact for trial. Any witness statements, which may include your own statements, must be in the form of affidavits. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to defendant's motion.

Any issue of fact that you wish to raise in opposition to defendant's motion must be supported by affidavits or by other documentary evidence contradicting the facts asserted by the defendant. If you do not respond to the motion on time with affidavits or documentary evidence contradicting the facts asserted by the defendant, the court may accept defendant's factual

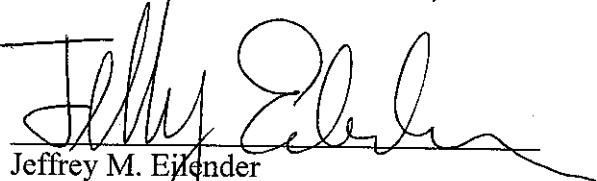
assertions as true. Judgment may then be entered in defendant's favor without a trial.

**If you have any questions, you may direct them to the *Pro Se* Office.**

Dated: New York, New York  
February 9, 2009

Respectfully submitted,  
**SCHLAM STONE & DOLAN, LLP**

By:

  
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-and-

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**TO:**

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